IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Notice of Motion No. of 2006
in
Writ Petition No ll55 of 2000

Adyaman Coop Hsg Society Ltd and ors.. petrs
vs
Mun Corpn of Gr Mumbai and ors.. respondents
and
Mr Mohammed Ishaque and anr.. Interveners

Mr S.K.Talsania for petitioners
Mr Vipin Kamdia with Sarita Dhonde for applicant
Mr G.D.Utangale for SRA
Mr Milind More AGP for State
Mr A.S.Anand for developer
Ms A R Joshi for BMC

CORAM; V.R.KINGAONKAR J

(Vacation Judge)

Dated l7.5.2006

P.C.

l. Heard the learned counsel for the parties. Leave granted.

2. This notice of motion is at the behest of the interveners and occupants of the transit camps, who are claiming themselves to be slum dwellers and are likely to face eviction and demolition.

3. The orders passed on various occasions, right

from 9.6.2000, would show that this court protected the occupants of the hutments and they were to be provided with accommodation in the transit camp. The order dated 9.6.2000 reveals that the occupants were supposed to be shifted to the regular tenements under the SRA Scheme within a period of two years commencing from l5.6.2000. The Court further directed as fallows:

> "(3) that the orders of allotment to the displaced persons shall clearly mention that they have no right to occupy the temporary structures permanently; that the temporary structures are only in the nature of a transit camp, from where they will be shifted at any time by the concerned authorities; and that they shall have no right to challenge any order passed by the concerned authorities directing them to shift to another place".

4. It appears that though the developer started construction work, yet, over a period of about 5 years no serious attempt has been made to get it completed. Some of the interveners are residing in the transit camp.It is disputed on behalf of the slum development authority that all of them are

authorised occupants. It is contended that some of them have no right to remain in the transit camp. Still, however, the fact remains that they are occupying accomodations in the transit camp. The individual claims may be verified by the concerned authority before rehabilitation i.e. providing of alternate accommodation to the eligible occupants. Those who are found to be ineligible may not be provided with regular alternate accommodation under the scheme..

5. True, by order dated l2.5.2006 interim stay to the notice of demolition is refused by the learned single Judge in another notice of motion taken out by the developer of the suit plot. Still, however, the notice of motion taken out by the developer was perhaps not sustainable inasmuch as the real aggrieved persons are the occupants of the transit camp They are the persons who are required to be accommodated in regular tenements by the B M C. and the developer. As stated earlier, many years have elapsed as the construction activity is not undertaken vigorously as expected. It appears that contempt proceedings are also initiated.

6. Be that as it may, I am of the opinion that temporary protection to the applicants is essential

since the motion is already kept for hearing on l6.6.2006. The notice in question is already issued and monsoon is in the offing but large number of families are likely to suffer though the developer has committed default in delaying the construction work.

7. In the circumstances I direct that the effect and operation of the notice in question be stayed till l6.6.2006. The learned counsel Shri Anand appearing for the developer states that the developer is ready and willing to complete the construction work within 3 months period. I accept the statement of the learned counsel Shri Anand and direct that the developer shall give such undertaking to this court within one week from today to abide by the following conditions:

a) The construction work shall be completed within a period of three months from today and progress report thereof shall be submitted to this court per fortnight.

b) The developer shall further undertake to pay compensation at Rs.500 per day per occupant if the accommodation is not provided within a period of 3 months from

today to each of the authorised occupant who is residing in the transit camp and shall give bank guarantee in the sum of Rs.l0 lacs to the Prothonotary and Sr Master of this court within a period of one month from today .

c) In case the developer commits default, the Mumbai Mun Corporation, after considering the progress of the construction within one month from today, shall terminate the contract with the developer with all penalty clauses if the progress of construction work is not satisfatory and shall immediately appoint another contractor to complete the work within given time.

d) If the construction work is not found progressed satisfactorily the applicants may report to this court for immediate payment of compensation as stated above and in that case they will have to secure alternate accommodation within a reasonable time, which will be fixed by the court.

e) The authorities concerned shall provide electricity and water connection to the

structures of the developer within a fortnight after the construction is at the stage of completion, irrespective of monsoon or otherwise.